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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,843	05/17/2006	Thorsten Goldacker	286805US0PCT	5731
22850 7590 06/18/2009 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER NUTTER, NATHAN M				
ART UNIT		PAPER NUMBER		
1796				
NOTIFICATION DATE		DELIVERY MODE		
06/18/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/579,843

Applicant(s)

GOLDACKER ET AL.

Examiner

Nathan M. Nutter

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

In response to the amendment filed 27 April 2009, the following is placed in effect.

The rejection of claim 2 under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for those resins positively recited in the claim, does not reasonably provide enablement for any type of "mixture (blend) of various plastics," is hereby expressly withdrawn.

The rejection of claim 2 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, is hereby expressly withdrawn.

The rejection of claims 1-6 and 8-12 under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Yang et al (US 7,067,188), is hereby expressly withdrawn.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 5, 10, 11, 13 and 14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 24-41 and 43-46 of copending Application No. 10/575,929 (US 2007/0055017) Schultes et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending claims the identical matrix and the identical particulate. The claims show an injected molded article, as herein recited, from a poly methyl methacrylate matrix having dispersed therethrough a cross-linked poly methyl methacrylate present in quantities embracing that herein.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 6-14 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Yang et al (US 6,841,612).

The patent to Yang et al ('612) teaches the production of a matrix polymer that may comprise thermoplastic polymers, including polymethyl methacrylate, an impact-modified polymethyl methacrylate, a polycarbonate, a polystyrene, an acrylate-styrene-acrylonitrile graft copolymer (ASA), a styrene acrylonitrile (SAN), a polyester, polyethylene terephthalate (PET), polybutylene terephthalate plastic (PBT), polyvinyl chloride plastic (PVC), a polyolefin plastic, acrylonitrile-butadiene-styrene (ABS) or a mixture (blend) thereof, employed with discrete cross-linked particles, For extrusion molding of sheets and other articles. Note the paragraph bridging column 2 to column 3 and column 7 (lines 1-8) which teaches the matrix polymers contemplated, including the impact-modified polymethyl methacrylate. The discrete particle may be core-shell at column 7 (lines 38-59), in as many as three stages, and may employ a cross-linking monomer including the recited ethylene glycol diimethacrylate. Note column 8 (lines 37 et seq.) for the cross-linking agent and column 7 (lines 8-37) for the monomer percentages, that embrace those claimed herein. The blend may be processed through extrusion molding techniques to produce sheets and profiles (pipes). Note the paragraph bridging column 10 to column 11.

The reference teaches essentially the identical invention as recited and claimed herein. The reference does not teach the particular glass transition temperature of the matting agent, of the impact modifier components of claim 4 or the surface roughness. However, these characteristics have not been shown to be separate from the particular compositions. Since there are no limitations in the claims to further differentiate the reference as to the scope of these parameters, they would be deemed to be inherent. When a reference discloses all of the limitations of a claim except a property or function, and the Examiner is unable to determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note *In re Fitzgerald et al* 619 F. 2d 67, 70, 205 USPQ 594, 596 (CCPA 1980). Note MPEP § 2112-2112.02. As such, the instant claims are deemed to be at least obvious, if not anticipated, by the teachings of the reference.

Response to Arguments

Applicant's arguments filed 27 April 2009 have been fully considered but they are not persuasive.

With regard to the provisional rejection of claims 1, 2, 5, 10, 11, 13 and 14 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 24-41 and 43-46 of copending Application No. 10/575,929 (US 2007/0055017) Schultes et al, no acceptable Terminal Disclaimer has been received in the Patent Office. The rejection is deemed to be tenable since polymer "g" of claim 30, as further

disclosed in claim 38 embraces the matting polymer and may be present in a range that clearly embraces that recited and claimed herein.

With regard to the rejection of claims 1-4 and 6-14 under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Yang et al (US 6,841,612), the claims recite comprising which fails to exclude other constituents, even in large amounts. The reference is relied upon for the entirety of its teachings, and not for isolated examples or passages. The reference shows the use of the low amounts "less than 0.5%" crosslinking agent. That is sufficient to exclude the instant claims from patentability.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nathan M. Nutter/
Primary Examiner, Art Unit 1796

nmn

15 June 2009